Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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(3)

No. 86-1094

In The
Supreme Court of the United States
October Term, 1986

JON TOM STATON,

Petitioner,

v.

JAMES K. MAYES, MOODY WADE, MIKE MOORE and INDEPENDENT SCHOOL DISTRICT NUMBER 20 OF MUSKOGEE COUNTY, OKLAHOMA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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6 pp

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

Respondents state at page eight of their response:

> The statement that the School District virtually stipulated that there was no cause for dismissal when it agreed that they owed Staton for the rest of his contract is an improepr (sic) statement not supported by the facts as is the statement that the School District informed the Trial Court that it would not and could not marshall (sic) the evidence and witnesses.

Petitioner offers the following two facts taken from the record to reveal the appropriateness of each of the two alleged "improper" statements.

As the trial court stated in the subsequent order found at pages 5a-7a of the response, the pre-trial order was written and presented to the court by defendants. The pre-trial order is found at pages 1a-4a of the response and states the following at page 3a.

———o———

ADMISSIONS

> The Defendant, School District, admits liability for $32,291.62, the unexpired portion of the contract and denies all other damages.

This admission is therefore a part of the record and petitioner submits that if he were guilty of the charges, he would have himself breached the contract and the respondents would have had no liability.

Respondents also deny that the record discloses that the defendant school board informed the trial court that the evidence and witnesses were no longer available and

that they did not intend to further contest cause for dismissal. Present counsel for respondents did not represent them at that time. The former counsel who did represent them at the time prepared an affidavit explaining what the trial court was told at pre-trial and it is a part of the record as an attachment to the petition for rehearing filed in the Tenth Circuit Court on May 15, 1984. The affidavit is reproduced here in its entirety.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JON TOM STATON,

Plaintiff-Appellant,

vs.

JAMES K. MAYES, MOODY WADE, MIKE MOORE, and INDEPENDENT SCHOOL DISTRICT NUMBER 20 OF MUSKOGEE COUNTY, OKLAHOMA,

Defendants-Appellees.

No. 81-1491
(D.C. Nos. 73-112-C and 77-186-C, E.D. Okla.)

AFFIDAVIT

STATE OF OKLAHOMA, COUNTY OF MUSKOGEE) ss.

Andrew Wilcoxen, of lawful age, being first duly sworn on oath, deposes and states:

I was the attorney for the Board of Education of Independent School District No. 20, Muskogee County, Oklahoma during a portion of the time involved in the litigation between Jon Tom Staton and the District.

After the case had gone to the United States Court of Appeals, Tenth Circuit, the first time and had been

reversed, and certiorari had been denied by the United States Supreme Court, I consulted with the Board of the District. The decision was made not to hold any further hearings or make any new findings on the charges to determine whether the earlier removal on them was proper. This option had been granted by the decision of the Tenth Circuit. The decision not to engage in new proceedings was made because of absence of witnesses, difficulty in recalling former events, change in membership of the Board, and no desire to engage in further community discord. This decision was communicated by me to the Honorable Fred Daugherty, United States District Judge. I am certain that Staton's attorney was informed of the Board's decision. Shortly thereafter I was relieved of my responsibilities and a new attorney was employed.

Further affiant saith not.

Dated this 14th day of May, 1984.

/s/ Andrew Wilcoxen
Andrew Wilcoxen

Subscribed and sworn to before me this 14th day of May, 1984.

/s/ Rena L. Wyrrick
Notary Public

My commission expires:
November 13, 1985

Respondents further urge that when the school district was so ordered by the court and did expunge the record of the stigmatizing charges seven years after the dismissal, that the question of damages due to the charges became moot. The conclusion is made at page five of the response that:

Petitioner is not entitled to a trial on the merits of the charges against him because there are no charges pending.

Petitioner put on evidence and the trial court found that Staton fully attempted to mitigate damages. Staton put on evidence of extensive damages flowing from the stigmatizing charges. The expungement of the record of reference to the charges seven years after the dismissal does not negate the damages.

The farcical hearing before the school board was nullified by the initial circuit court opinion. Petitioner agrees with respondents that there was no trial to the trial court of the merits of the charges against him. The issue of liability cannot be decided without a trial of the merits of the charges. Respondents erroneously interpret the teachings of this Court when they state that Staton had the burden of proving liability absent a trial of the merits of the charges. The circuit court made the same error when they wrongfully interpreted the teachings of this Court. (See page 4a of Appendix of the petition.)

The Supreme Court has held that a plaintiff in a § 1983 action of this type must prove that the damages alleged were caused by the procedural due process deficiencies, and not by a justified deprivation.

A "justified deprivation" can only be proven by a trial of the merits of the charges. Petitioner further contends that the teachings of this Court actually are that once stigmatizing charges and resultant damages are proven, the bur-

den shifts to the respondents to prove a justified dismissal after proper notice and hearing.

Respectfully submitted,

/s/ D.D. Hayes
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